

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE : : 14-MC-00041 (CLP)-GRB-RER
:
HURRICANE SANDY CASES. :
: June 15, 2015
: Brooklyn, New York
:

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE CHERYL L. POLLAK, GARY R. BROWN
AND RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE

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1 (Proceedings began at 11:04 a.m.)

2 THE CLERK: This is In re Hurricane Sandy Cases,
3 docket number 14-MC-41, Civil Cause for Status Conference.
4 Attorneys, please state your appearances for the record.

5 MR. COX: Yes, this is Greg Cox with the Mostyn Law
6 Firm appearing for the plaintiffs. I'm joined by Mr. Sparks
7 from my office and also Ms. Maida from the Mostyn Law Firm.

8 THE COURT: All right. Good morning.

9 MR. ACKERMAN: This is Wystan Ackerman with Robinson
10 and Cole for Standard Fire Insurance Company. Also with me is
11 Frank Coulom from my firm and Craig Blackman and Jana Landon
12 from the Stradley Firm are on the line as well.

13 THE COURT: Okay. Good morning. Anybody else?

14 Okay. My law clerk has indicated that there might
15 be some issues with some of you hearing. If that becomes a
16 problem, please let us know. Okay? Yes?

17 MR. ACKERMAN: Okay.

18 MR. COX: Yes.

19 THE COURT: Okay. The reason I asked for this
20 conference is to address some questions that have arisen in my
21 mind having now looked at the documents that Standard Fire
22 submitted for in camera review.

23 First of all, am I correct that these are not the
24 only documents that were withheld from plaintiffs in the
25 overall Standard Fire cases? I think you submitted --

1 MR. ACKERMAN: This is Wystan Ackerman. That is
2 correct, Your Honor.

3 THE COURT: Okay. Because I think I got --

4 MR. ACKERMAN: That is correct, Your Honor. These
5 are three of the cases -- I'm sorry.

6 THE COURT: Go ahead.

7 MR. ACKERMAN: These are three of the cases against
8 Standard Fire. The plaintiff had identified these three as
9 examples of redactions for purposes of the evidentiary hearing
10 that they wish to raise. So we provided to the court for in
11 camera review documents that had been withheld in these three
12 cases. I do have one clarification though to make which is
13 that in the Snead matter there actually was a supplemental
14 production that occurred on April 2nd in which nearly all of
15 what had been previously withheld was produced in that case.
16 So the only items that were listed on the privilege log that
17 ultimately was provided on I believe it was April 2nd in that
18 case where some reserve dollar amounts that were redacted but
19 the other materials were included in a supplemental
20 production.

21 THE COURT: Okay. But similar withholdings were
22 made in other Standard Fire cases, correct?

23 MR. ACKERMAN: Yes. My understanding is that the
24 Stradley Firm took a similar approach in the other case.

25 THE COURT: Okay. All right. Now, without going

1 into any of the details of what is in these documents, they do
2 appear in large measure to be engineering reports which have
3 been redlined or blacklined, if you will, with additional
4 comments from someone other than the original engineer when he
5 wrote the report. Am I accurate in that regard?

6 MR. ACKERMAN: I do not think that's accurate, Your
7 Honor. What I believe you may be referring to is there is an
8 independent adjusting report that was prepared post litigation
9 and the way that the independent adjusting firm did that work
10 was that they took the report that they had previously
11 prepared prior to the lawsuit and then they inserted in color,
12 in red, some additional information, additional comments that
13 they had on an estimate that was prepared [indiscernible]
14 Claims which was an adjusting firm retained by the plaintiffs
15 on the plaintiffs' side. So they would provide Mr. Blackman
16 with sort of their commentary on the plaintiff's report that
17 they prepared. They had an expert prepare it. And Mr.
18 Blackman asked them to comment on that and then they would
19 then comment on that by -- the way they would do that was they
20 would take their prior report and then include some additional
21 content into it. So that's I believe what Your Honor is
22 referring to there. It was not an engineering report.

23 THE COURT: Okay. That was unclear to me when I
24 looked at them. And there are a whole slew of attachments to
25 these adjusters' reports I guess is what they technically

1 should be called then. All of these attachments were redacted
2 as well?

3 MR. ACKERMAN: They were redacted as attachments to
4 the adjuster's report but they were produced as, you know,
5 self-standing documents. You know, for example, in the
6 Bairity [Ph.] case the supplemental report attached to the US
7 forensics report there was the subject of the hearing and it
8 was produced in other productions of the case. But the
9 approach that was taken when these documents were reviewed,
10 the Stradley Firm would, if it was holding basically or
11 redacting the report, there was post litigation. They
12 redacted the full report including its attachments although
13 those attachments, if they were earlier created documents,
14 were produced separately as self standing documents. And in
15 the Bairity, for example, all of those materials we've been
16 able to confirm that all of those attachments to that
17 independent adjusting report were produced as separate self
18 standing documents.

19 THE COURT: Okay. So I guess that means that all of
20 the photographs which are attached to the Bairity report,
21 which I think there are about it looks like 15 or so pages,
22 those were redacted but you're saying that they had already
23 been previously provided to plaintiff's counsel?

24 MR. ACKERMAN: Yes. In the Bairity case the
25 photographs that are part of what we provided to you at

1 SRSY289924 are included in a production with the Bates number
2 3PBAIJ24 through 38.

3 THE COURT: And when the redacted documents were
4 provided and multiple pages such as these photographs were
5 withheld, was there a page saying redacted for each page
6 withheld or was it just one page for the entire document? How
7 would they produced to the plaintiff I guess is really what
8 I'm trying to figure out.

9 MR. ACKERMAN: Yes, Your Honor. They were produced.
10 My understanding the way this was done in the production, and
11 I've seen this in a number of these cases, every page would be
12 marked redacted so if there was a 50 page report that was
13 withheld, plaintiffs would receive 50 pages of material with a
14 Bates number on it and nothing but the word redacted.

15 THE COURT: Okay. Yes. I mean my law clerk points
16 out that, for example, the photographs that you just
17 mentioned, as I said I think there are about 15 pages of them,
18 they all have the exact same Bates number on it. In fact, I
19 think the entire document has the same Bates number on it,
20 however many pages there are. Why was it --

21 MR. ACKERMAN: Yeah, the reason for that is -- my
22 understanding of the way Stradley's electronic system works is
23 when they initially load documents into their system what gets
24 assigned is a document number and that number is the same for
25 every page of the document. And then when they produce

1 documents, they will apply traditional Bates numbers to them
2 at that point in time. So the documents that were never
3 produced because they were redacted were sent to you in the
4 form that they were originally loaded into Stradley's system
5 which is why every page has the same -- every page of what
6 they consider a particular document has the same number on it.

7 THE COURT: So I guess my question is how do we
8 confirm that in fact every photograph in here, which frankly I
9 don't think is privileged and shouldn't be withheld from
10 production, how do I know, there's no way to tell whether or
11 not the plaintiff actually received all 16 pages of these
12 photographs. I mean normally they'd be one, two, three, four,
13 five, six, then you'd get one, two, three, four, five, six
14 pictures and you'd be able to tell. But I guess I don't know
15 how the plaintiff verifies that they got everything that they
16 should have gotten when this entire package was withheld under
17 one Bates number.

18 MR. ACKERMAN: I mean unless we provide both sets of
19 photographs to the plaintiffs, I'm not sure how they can
20 confirm. I'm not sure we want to trouble the court with doing
21 that. I don't think that my client cares about the photograph
22 to such an extent that we would want to trouble you with that.
23 So I think if the court would like us to produce all of those
24 photographs that fall within the scope of this, I would be
25 confident my client would be fine with doing that.

1 THE COURT: I mean pretty much everything attached
2 to the actual report itself redlined document including the
3 plaintiff's own proof of loss, I mean other things in here,
4 letters from the Gauthier firm -- I mean all of this seems to
5 me to be stuff that under normal circumstances would not be
6 withheld except for the fact that it's attached to the expert
7 report. Am I correct? Is that what you've done here?

8 MR. ACKERMAN: That is correct, Your Honor, and we
9 have confirmed that in the case of Bairity all of those
10 attachments have been produced in separate productions.

11 THE COURT: What about the other --

12 MR. ACKERMAN: But if it would make it easier we'd
13 be happy to disclose them.

14 THE COURT: Okay. And I guess then the other
15 question is you explained what happened in Bairity, that Mr.
16 Blackman gave the plaintiff adjuster's report I guess from
17 Canopy Claims I think to its own adjuster. He redlined it
18 with additional commentary. Is that what happened in every
19 single one of these cases, all of the standard filed cases?

20 MR. ACKERMAN: I'm not sure, Your Honor, we can make
21 a blanket statement as to how this was done in every single
22 instance. There are an awful lot of cases here. But my
23 understanding is that Mr. Blackman's approach generally
24 speaking was when he got an adjusting report from the
25 plaintiff's side, he would send that to either the same

1 adjuster that had handled the matter prior to litigation, or
2 if that person was not available for some reason, to another
3 independent adjuster to look at and provide comments to Mr.
4 Blackman. Similarly, where there was an engineering report
5 that was prepared by an engineer working on the plaintiff's
6 side, it was provided in the course of litigation or shortly
7 before litigation. Then Mr. Blackman would provide that to,
8 again, an engineer to look at and provide him with commentary
9 on it and if necessary, do another inspection. But exactly
10 how it went down would depend on the particular circumstances
11 involved.

12 THE COURT: I guess what troubles me is that, you
13 know, all of this was done in the context I'm assuming of this
14 special procedure that Standard Fire set up in lieu of the
15 court ordered mediation. And I didn't supervise the Standard
16 Fire proceeding, but I have spoken to Judge Reyes and
17 confirmed that it was his understanding, and he operated the
18 same way I did with the companies that I handled, Allstate and
19 American Bankers, which was when I authorized them to go out
20 and reinspect the home to deal with these engineering or
21 basement issues, the understanding was that whatever was
22 produced would be provided to plaintiff's counsel. Now I take
23 it from what Mr. Blackman did here, that's not what happened.
24 Am I correct or am I misreading the situation?

25 MR. ACKERMAN: I believe that's incorrect, Your

1 Honor. I can defer to Mr. Blackman if you'd like.

2 MR. BLACKMAN: Yeah, Your Honor, your understanding
3 is a bit more limited than the circumstances. At first, I
4 just want to add it wasn't simply based upon proofs of loss or
5 -- there were multiple circumstances where I was directing
6 adjusters to review supplemental data for purposes of telling
7 us -- evaluating -- for us to evaluate the merits of the
8 plaintiff's claims as we were trying to move these into
9 resolution. So it could be circumstances like you see here
10 where supplemental proofs and documentation were submitted.
11 There could be a circumstance as you see here where we've got
12 a plaintiff's engineer's report and I wanted to have the
13 independent engineer review that data and tell us whether
14 there was anything new documented in the plaintiff's report
15 that would change their prior conclusion. Your Honor would
16 also recall that, I forget which DMO it was, but there was a
17 requirement that the plaintiffs provide all of their actual
18 receipts and invoices. We were getting reams of data from
19 plaintiffs and now they're stating that circumstance. And I
20 was also sending all of those documents to adjusters to tell
21 us what they disclosed, what more might be payable, what
22 documentation was missing. And all of this, by the way, long
23 predicated the initiation of the IAPA process which didn't come
24 about until spring or early summer. We were initiating these
25 global on going evaluation steps from the very outset of the

1 filing of these cases. So there's a long period of time in
2 which this data is being developed prior to the IAPA process
3 separate and independent from it. The interplay of the IAPA
4 process is that for settlement discussion purposes as we got
5 into each matter as they rescheduled, the readjustment data
6 was then shared with plaintiff's counsel and their adjuster in
7 this settlement conference context so that they could see what
8 our evaluation was of the supplemental materials as we worked
9 through a line by line review during the IAPA process. So
10 where you see documents here like the supplemental reports in
11 Nevins, for example, if we had gotten Nevins into an IAPA
12 process, our engineer's evaluation of the plaintiff's
13 engineering report would have been presented and discussed in
14 the settlement discussion. It would not have been produced as
15 a litigation document.

16 THE COURT: Okay. I guess I just don't understand
17 then why they were withheld at all because this is one of the
18 issues that came up in the mediation where lawyers were
19 showing up at the mediation and for the first time providing
20 the other side with a report that they had never seen and
21 relying on that report to discuss mediation. So if you were
22 turning them over anyway, I don't understand why they weren't
23 withheld in the first place. And I guess I'm still unclear.
24 It sounded from the testimony before me there was still a lot
25 of these documents that had never been disclosed to the

1 counsel for the plaintiffs in specific cases. Am I right
2 about that?

3 MR. BLACKMAN: You are. There were a -- recall, the
4 IAPA process got pulled to a halt in February, Your Honor.
5 There were many, many cases that never got to the IAPA process
6 because the FEMA settlement process resulted. In those cases,
7 we provided all of those documents to FEMA for their use to
8 present the plaintiffs in the settlement discussion. We did
9 not ever produce these materials at the last minute at the
10 IAPA conference as a surprise as Brian O'Cally [Ph.] would no
11 doubt testify. As we went into each round we provided them
12 with copies of the materials regarding the matters in that
13 round so that when we met we were having immediate and
14 constructive discussions. And Mr. O'Cally and their adjuster
15 were both repeatedly and devotedly extremely pleased with how
16 that process was handled because it was done in an
17 extraordinarily constructive manner. We weren't showing up at
18 these conferences trying to blind sight them as they will
19 certainly testify. My job was to find whatever sources of
20 supplemental payments within the program could be made and to
21 get a FEMA waiver or concurrence where necessary. So we
22 weren't showing up at IAPA conferences and dropping stuff in
23 their laps saying sorry, this isn't payable. As we went into
24 each round, we would cooperatively work to identify, for
25 example, the ones where we knew there was a substantial

1 payment that could be made, the low hanging fruit so to speak,
2 so that -- and provide them with the material and our
3 evaluation in advance of sitting down so that when everybody
4 sat down we were immediately going line by line to see if
5 anything had been missed.

6 THE COURT: Okay. Well, it was just something you
7 had said like two minutes ago that led me to believe that you
8 were withholding them until the actual meeting. So I
9 apologize if I misunderstood what you were saying. But I
10 gather now from what you've just said that when the IAPA
11 process halted because of FEMA's involvement, you turned over
12 all of these documents that contained additional analyses, if
13 you will, of either the plaintiff's adjuster's report to the
14 plaintiff's engineers or the receipts, et cetera. All of that
15 has been disclosed to FEMA. Is that what I just heard you
16 say?

17 MR. BLACKMAN: The manner where any -- I'm sorry.

18 THE COURT: Go ahead.

19 MR. BLACKMAN: In the manner where any such
20 supplemental reports were made clear, for example, this is
21 your starting point. Just to pull a number out of thin air,
22 they provided us with receipts and invoices. There's an
23 additional \$25,000 that's payable here. Here is the report
24 and evaluation. When we sent the files over to FEMA this
25 should be your starting point for your negotiations. You

1 don't need to recreate this.

2 THE COURT: Okay. So in I guess it's Snead, Snead
3 is one that I got, it looks like it's not just comments on an
4 old report but an entirely new report. Am I wrong about that?

5 MR. ACKERMAN: That is correct, Your Honor. That
6 one is one that has been produced. Although it was initially
7 withheld, it was produced in April, I believe the date is
8 April 2nd.

9 THE COURT: Okay.

10 MR. BLACKMAN: And again, Your Honor, if you put it
11 in context, the Snead was a basement survey and this was
12 before the court's order requiring the plaintiffs to identify
13 any properties in which they believed a basement had been
14 improperly designated. So before we got to give them the
15 survey confirming that it was a basement because we didn't get
16 to a Snead discussion, the [indiscernible] firm had already
17 withdrawn the contention that Snead was not subject to a
18 basement limitation. And so that was one of the reasons that
19 even though we never got to Snead, we didn't produce that
20 because it was mooted.

21 THE COURT: Okay. All right. And I guess my final
22 question then is has there been a privilege log provided to
23 the plaintiffs with respect to reports that continue to this
24 day to have been withheld from them?

25 MR. ACKERMAN: Your Honor, in the Snead case there

1 was a privilege log that was provided when the supplemental
2 production was made. In the other two cases, there was no
3 privilege log created and provided prior to the evidentiary
4 hearing and we did submit the declaration of Craig Blackman
5 which provided much more detail I think than typically a
6 privilege log would. But that was the thinking there.

7 In cases that had settled, meaning FEMA had reported
8 this case as settled, and where no plaintiffs had raised any
9 issues with respect to redaction given that the case had
10 settled, they reached a settlement, Stradley did not continue
11 to prepare privilege logs in those settled cases.

12 THE COURT: Did you provide Mr. Blackman's affidavit
13 to plaintiff's counsel or just to me?

14 MR. ACKERMAN: Yes. That was filed in the record
15 with Mr. Goldman's letter. It was filed publicly.

16 THE COURT: Okay. All right. Mr. Cox, Mr. Sparks,
17 Ms. Maida, do you have any questions? I have a better
18 understanding of what this is --

19 MR. COX: Well, this is --

20 THE COURT: -- but -- go ahead.

21 MR. COX: Yes, Your Honor. This is Greg Cox on
22 behalf of the plaintiffs. Based on the affidavit and what I'm
23 hearing today, I do have a better understanding about these
24 specific cases. The one thing that I didn't hear is that
25 there was independent confirmation that the documents such as

1 the attachments that were referenced, although they say that
2 they were all produced independently in Bairity, I don't know
3 if that's the case in other files. I don't know the extent
4 that they have gone back to try to figure out if those
5 documents being withheld were actually independently produced
6 including the photographs and the other underlying information
7 that might be attached to those reports. I'm somewhat
8 laboring in the dark here because I have not seen the
9 documents and I really probably could speak as intelligently
10 about them as Your Honor could having seen them. But that
11 would be one of my primary concerns is if there's some sort of
12 independent verification by Stradley or whomever that in fact
13 the underlying data and the photographs and the factual
14 information has been independently produced in all the cases.

15 THE COURT: Do you concede that the redlined
16 reports, the reports for example where Mr. Blackman took the
17 Canopy claims adjuster's report, gave it to his own adjuster
18 and the defendant's adjuster then added his or her own
19 comments regarding what was in the Canopy claims estimate?
20 Are you conceding or willing to concede that that is protected
21 work product and was properly withheld, and that so long as we
22 get a verification from Standard Fire that all of the other
23 exhibits and attachments such as photographs were
24 independently produced that we have no problems here?

25 MR. COX: Well, in that circumstance I think we

1 would concede that it's privileged if it was done at the
2 direction of counsel and not at the direction of, you know,
3 the client itself. I guess a lot of -- my concern is that
4 some of it may just be coincidental timing because, for
5 instance, if the carrier was going to send an adjuster out and
6 the adjuster just happened to go back out after a lawsuit was
7 filed, I don't think that would make it privileged. But if
8 Mr. Blackman is saying that after suits were filed he's the
9 one directing that these pre-analysis or readjustments take
10 place and that they are reporting to him, then I think in
11 those circumstances we would concede that that would be work
12 product. I just don't know in all the circumstances if that's
13 exactly what happened. But here if that's the case then I
14 think we're satisfied with that.

15 MR. BLACKMAN: Your question, Your Honor -- it's
16 Craig Blackman. Standard Fire's operating practice through
17 NFS is that upon notice of the filing of a lawsuit all
18 [inaudible] are dropped. No further adjustments or
19 inspections take place. I gave a specific instruction on
20 behalf of Standard Fire when we saw the wave of litigation
21 that was coming in and Standard Fire's interest in getting
22 these evaluated for resolution as swiftly as possible. I gave
23 a specific instruction that the standard practice should be
24 put by the wayside and that I personally wanted all
25 supplemental data to be adjusted, reviewed, and reported so

1 that we could put these cases into settlement posture as
2 quickly as possible. The only reason there is any post
3 litigation evaluation going on in the Standard Fire cases was
4 because of that direction.

5 THE COURT: Okay. And how do we verify -- this is a
6 question, I don't really know the answer, that in fact in all
7 of the Standard Fire cases where the supplemental reports were
8 prepared that the underlying pre-litigation documentation
9 where things such as photographs were in fact provided to the
10 plaintiff, how can I be assured of that? Again, this method
11 of Bates stamping makes it more complicated. Otherwise I
12 would just have you check. But we can't really do that now
13 can we?

14 MR. ACKERMAN: Well, Your Honor, this is Wystan
15 Ackerman. That was a process that Stradley was engaged in at
16 our client's direction in terms of going back through and
17 making sure that redactions were appropriate in that respect
18 and any other respect. Now, they have done that in a number
19 of cases. There's been a lot of cases that are settled as
20 well where the clients' lawyers didn't raise any issue about
21 it before they -- I mean they were aware of the redactions.
22 Obviously they got page after page of redacted material and
23 then they settled the case. So I think in the cases that
24 remain open we're happy to continue that process and turn over
25 the attachments. But to go back through and do it in cases

1 that are, you know, fully and finally settled or cases where
2 the plaintiffs' lawyers agreed to a settlement without raising
3 any concern about the redactions would seem to be unnecessary.

4 THE COURT: How long would it take --

5 MR. BLACKMAN: If I may add, Your Honor, just the
6 nature of the tasks, this was data that was coming from the
7 plaintiffs that I was having reviewed and evaluated so that
8 even if there were some circumstance where, and I have no
9 particular circumstance in mind, but if there were some
10 circumstance where particular documents provided to us by
11 plaintiffs had not been produced back to them such as, for
12 example, their billing receipts and invoices, the material
13 that I was having reviewed was material that was coming from
14 and on behalf of plaintiffs in the first place. That was the
15 nature of these reexaminations and reviews. It wasn't any
16 independent go out and tell me what you find. It was a
17 response to what was being provided to us. What we now have
18 from plaintiffs is how much more is payable or what do we
19 need.

20 THE COURT: Well, I mean I guess, Mr. Blackman, with
21 all due respect, I'm looking at the Snead case, for example,
22 and there is a report here from an entity called Demaro
23 Engineering which seems to be not a plaintiff engineer,
24 although I'm not sure. And it's unclear to me whether or not
25 the photographs attached to this gentleman's report were taken

20

1 by plaintiff's engineer or plaintiff's adjuster, or someone
2 hired by Standard Fire. That's why I'm saying I don't have
3 any reason to disbelieve you but there's nothing in the
4 documents themselves that indicate that in fact these
5 documents were prepared or were photographs taken by plaintiff
6 agents and not someone -- in fact, some of these seem to have
7 been taken by United Technical Consultants. Was that
8 plaintiff's expert what was that a defendant's expert?

9 MR. BLACKMAN: UTC, Your Honor, and Steven Bonjorno
10 [Ph.] were the independent engineers that we retained. What
11 they were reviewing was the plaintiff's report.

12 THE COURT: Okay.

13 MR. COX: And to be clear, the photographs in the
14 Snead case were produced, my understanding, those were
15 produced in April as part of the supplemental review and
16 production process, and that is a process that Standard Fire
17 is happy to continue and complete in cases that remain open on
18 the court's docket.

19 THE COURT: Right. But --

20 MR. COX: And that will ensure that any attachments
21 to these types of reports get produced in open cases.

22 THE COURT: Okay. I appreciate that, but I guess my
23 question is these images, were they images provided to
24 Standard Fire by their own expert or by plaintiff's expert?

25 MR. COX: I believe that the images in the Snead

1 file were taken by the company that was asked post litigation
2 by Mr. Blackman to do a basement survey, so they went out to
3 determine whether or not the lower level of that home was a
4 basement under FEMA guidelines and they took a number of
5 photographs in the course of that work. So I believe that was
6 the reason for those photographs in the Snead case.

7 THE COURT: Exactly. And so those are not documents
8 that would have had to be reproduced back to the plaintiffs
9 because they came from plaintiffs in the first place. These
10 were documents prepared in the first instance by someone
11 working for Standard Fire. And it's these very kind of
12 documents that I want to make sure have actually been provided
13 to the plaintiffs, you know, in the open cases certainly. And
14 I guess I would ask plaintiff's counsel if they have any
15 reason to request reopening the other cases to see this stuff
16 or not, or should we just have Standard Fire go forward and do
17 as counsel has suggested and just double check and make sure
18 all this stuff has been provided that's not, you know, true
19 work product.

20 MR. COX: Your Honor, this is Greg Cox. I'm a
21 little hesitant to speak on behalf of other plaintiff counsel
22 that may not be party to this. And I'm sure there been a
23 number of cases that have settled. And my only worry is that
24 they were settled on imperfect information. You know, a
25 hypothetical that pops into my head is this basement survey.

1 I know that was a big issue having to do with the coverages.
2 It was sort of an ongoing contention between the plaintiffs
3 and the defendants and there was, you know, I guess it's a
4 factual dispute below grade, you know, et cetera, et cetera.
5 And my only concern would be if, you know, there was a
6 photograph or some factual information that was gathered by
7 defendants and not provided, you know, whether they gave it to
8 FEMA or not. I don't know. I can't say that I have seen all
9 the productions and if FEMA even forwarded this information on
10 for these settlement conferences. But if there was some
11 factual information that might actually have contradicted the
12 defendant's position and if a case was settled based on an
13 incorrect understanding of the facts, I'm hesitant to say well
14 no harm no foul. I just don't know.

15 THE COURT: All right. Well here's --

16 MR. COX: I don't know how we're even going to
17 figure that out.

18 THE COURT: Yes, I don't know either. I mean here's
19 what I'm going to say.

20 MR. BLACKMAN: If I may, Your Honor, first of all I
21 completely agree with Mr. Cox that if we had -- if there had
22 been an adjustment that said it was a basement and we did a
23 survey that said that it wasn't a basement, that absolutely
24 would have been disclosed to the plaintiffs regardless of
25 whether they had withdrawn their contention that it wasn't a

1 basement and there would have been an immediate readjustment.
2 I have at least one of those cases where that's precisely what
3 happened. But I want to remind you that in Snead, that's not
4 what happened. We'd be happy to provide the documents. But
5 as I said, this was mooted, the basement issue was mooted as
6 to the [indiscernible] matters. They withdrew their
7 objections as to any of the Standard Fire matters that had
8 been adjusted in the basement in response to DMO orders
9 requiring them to undertake surveys for any disputed
10 properties. Snead was not listed. The contention that it
11 might not be a basement was effectively withdrawn and this
12 issue mooted which is why we didn't bother to send them the
13 report and the photographs.

14 THE COURT: Okay. Well, I'm not so much concerned
15 about Snead as I am the other Standard Fire cases for which I
16 haven't seen the documents. And I guess I would say that it
17 weren't for the problem that developed with an engineering
18 report in the other case that got missed or put in the wrong
19 pile or however you want to describe it, I would be
20 comfortable saying well okay, it sounds like everything was
21 working according to the process. But I think what I'm going
22 to do is I'm going to order Standard Fire to go back and
23 verify for all of the open cases, the ones that have not
24 settled, that in fact all of the non-privileged, non-work
25 product documents as we've described them here today have in

1 fact been provided to plaintiff's counsel so that going
2 forward any discussions of settlement will be, you know,
3 handled with all available information. I'm not sure what I
4 am thinking about with respect to the settled [indiscernible]
5 cases but let's at least proceed so that we can continue to
6 move forward on the ones that haven't settled yet. Let's get
7 a verification. Can we do that in the next week?

8 MR. COX: I think -- I mean Stradley is indicating
9 they believe they can do it within seven days but we'd ask for
10 14 days I think just to make sure we have enough time for
11 that.

12 THE COURT: Okay.

13 MR. COX: If that's all right.

14 THE COURT: That's fine.

15 MR. ACKERMAN: And just for purposes of
16 clarification, there are a substantial number of cases that
17 are administratively closed on the docket because I guess they
18 would term a tentative settlement has been reached between
19 Mostyn and FEMA. As to those cases, are we considering them
20 not part of this process or are they part of this process?

21 THE COURT: Well, the problem with the tentatively
22 settled cases is that they were, and then as you all know,
23 there was a problem that developed with representations made
24 by FEMA that could not be followed through on. And so the
25 last time I looked, we really only had maybe 50 or so cases

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1 that had actually settled, that people actually agreed to take
2 the FEMA numbers. So I'm not sure that the fact that a case
3 is administratively closed or was administratively closed
4 several months ago means that they actually have agreed to the
5 settlement. It's my understanding that some of those cases
6 are being revisited but maybe, Mr. Cox, you can tell me if I'm
7 wrong on that score.

8 MR. COX: I don't disagree with the court's
9 understanding. I think there's been a lot of, you know, back
10 and forth on some of these cases. So I would ask that those
11 cases not be considered closed or settled because at best it's
12 only tentative at this point. If there is information, if I
13 move the needle one way or the other on getting the case to a
14 different resolution, I think we need it.

15 THE COURT: Okay. All right. So I would consider
16 those administratively closed cases unless the plaintiff has
17 signed a release and everything is done, then I would consider
18 those cases to be ones where I just want to know that you've
19 actually turned over everything. Okay?

20 MR. ACKERMAN: Okay. We understand, Your Honor.

21 THE COURT: Okay. All right. Mr. Cox, anything
22 else?

23 MR. COX: No, Your Honor. Thank you for your time.

24 THE COURT: Okay. Thank you all.

25 MR. ACKERMAN: Your Honor, if I could, this is

1 Wystan Ackerman. We would also on behalf of Standard Fire
2 like to have a settlement discussion. I think in particular
3 with respect to the Cannon matter, but it may lead to
4 something broader. I'm not sure if Your Honor is comfortable
5 with conducting that given your role in the hearing and all or
6 if we should reach out to Judge Reyes, but Standard Fire would
7 like to have such a conference.

8 THE COURT: Let me speak to Judge Reyes and Judge
9 Brown. I'm going to be out for the rest of the week, but
10 maybe it would make sense for him to do it if he has the time.
11 I believe he's on trial this week so it may not be convenient
12 for him. But we will discuss it. One or the other of us will
13 get back and schedule something. Okay?

14 MR. ACKERMAN: Thank you, Your Honor.

15 MR. BLACKMAN: Thank you, Your Honor.

16 THE COURT: All right. Thank you.

17 MR. COX: Thank you.

18 THE COURT: Bye-bye now.

19 (Proceedings concluded at 11:48 a.m.)

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

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Mary Greco

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Dated: July 7, 2015

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